IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.MC.No. 2176 of 2007()

O.R.NO. 21/06 OF NACHIVAYAL FOREST STATION
CMP.467/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, DEVICOLAM

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PETITIONER: CLAIM PETITIONER

MARUTHI AUTO FINANCE,KOTHAMANGALAM,
REPRESENTED BY ITS MANAGER,
BENNY KURIAKOSE,S/O.KURIAKOSE PUTHAYATH HOUSE,
KOTHAMANGALAM.

BY ADV. SRI.SOORAJ T.ELENJICKAL

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA THROUGH DEPUTY RANGER,
FOREST STATION,NACHIVAYAL REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. BABU SUKUMARAN, PUTHUKERIL HOUSE,
MANKULAM PO,MUNIPPARA, ADIMALY.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2176 of 2007

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Dated this the 3rd day of August, 2007

O R D E R

The petitioner claims to be the financier in respect of a vehicle which has been seized by the Forest officials on the allegation that the vehicle was used for illicit transportation of sandal wood pieces. The vehicle has been lying in the custody of the forest officials. No other claimant has come before the authorities for custody of the vehicle. The petitioner applied before the learned Magistrate for release of the vehicle. The learned Magistrate rejected the prayer for release of the vehicle.

2. The learned counsel for the petitioner submits that the petitioner is aggrieved by the impugned order. In the total absence of any other claimant, it must have been held that the petitioner is the person who is most entitled for possession of the vehicle.

3. In this Crl.M.C. notice was sent to the alleged registered owner of the vehicle. He has not entered appearance. He has sent a letter to the Registrar to say that he is not interested in any manner in the vehicle. The vehicle is exposed to sun and rain and it is unnecessarily undergoing deterioration. The petitioner has a

substantial stake on the vehicle in as much as the loan advanced by him has to be recovered. In these circumstances the petitioner prays that subject to appropriate conditions, the vehicle may be released to the petitioner.

4. The learned Prosecutor submits that the State does not have any objection against release of the vehicle, but it may be on appropriate and strict conditions. The learned Prosecutor submits that either deposit of the value of the vehicle may be insisted or the petitioner may be directed to furnish bank guarantee.

5. I have considered all the relevant inputs. I am of the opinion that it is only necessary to insist that the vehicle shall be available as and when required by the court. Every court must remind itself of the decision in **Sunderbhai Ambalal Desai** v. **State of Gujarat** (AIR 2003 SC 638), where the Supreme Court has commented on the sad spectacle of valuable properties undergoing damage and deterioration in court premises. Subject to appropriate conditions, the vehicle can be directed to be released to the petitioner.

6. This Crl.M.C. is allowed. The vehicle shall be released to the petitioner on the following terms and conditions by the learned Magistrate.

(1) The petitioner shall produce all the documents before the learned Magistrate to show that he is interested in the vehicle and is entitled to claim custody.

(2) He shall deposit an amount of Rs.12,500/- and execute a bond for Rs. 50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate. The learned Magistrate shall scrupulously ensure that the sureties produced are sufficient and solvent.

(3) The petitioner, in the bond to be executed by him, shall specifically undertake to produce the vehicle before the learned Magistrate as and when directed and before the authorities under Section 61A of the Kerala Forest Act, if a valid direction is issued by such authority eventually.

(R. BASANT)
Judge

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